

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

DOUGLAS HARRY WARENBACK,

Case No. 2:15-cv-01789-APG-VCF

v

Plaintiff,

## ORDER

D.W. NEVEN, et al.,

## Defendants.

On January 4, 2016, the court screened this *pro se* petition for writ of habeas corpus pursuant to the Rules Governing Habeas cases and directed that it be served on respondents (Dkt. #10). In the screening order, the court dismissed ground 1 for failure to state a claim for which relief may be granted. Petitioner Douglas Harry Warenback has filed a motion for reconsideration of the dismissal of ground 1 pursuant to Rule 60(b) of the Federal Rules of Civil Procedure (Dkt. #13).

15 Rule 60(b) entitles the moving party to relief from judgment on several grounds,  
16 including the catch-all category “any other reason justifying relief from the operation of  
17 the judgment.” Fed.R.Civ.P. 60(b)(6). A motion under subsections (b)(4-6) must be  
18 brought “within a reasonable time.” Fed.R.Civ.P. 60(c)(1). Relief under subsection  
19 (b)(6) requires a showing of “extraordinary circumstances.” *Gonzalez v. Crosby*, 545  
20 U.S. 524, 535 (2005). Rule 60(b) applies to habeas proceedings, but only in conformity  
21 with Antiterrorism and Effective Death Penalty Act (AEDPA), including the limits on  
22 successive federal petitions set forth at 28 U.S.C. § 2244(b). *Gonzalez*, 545 U.S. at  
23 529. When a Rule 60(b) motion attacks some defect in the integrity of the federal  
24 habeas proceedings and not the substance of the court’s resolution of a claim on the  
25 merits the court should address it as it would a Rule 60(b) motion raised in any other  
26 civil case. *Id.* at 532.

Here, although Warenback styled this pleading as a motion, it in substance seeks a successive consideration of ground 1. See *id.* at 531. He does not challenge the integrity of the proceedings, and therefore, the motion is barred under AEDPA. *Id.*

**IT IS THEREFORE ORDERED** that petitioner's motion for district judge to reconsider order (Dkt. #13) is **DENIED**.

**IT IS FURTHER ORDERED** that petitioner's motion for submission of the motion to reconsider (Dkt. #14) is **DENIED**.

**IT IS FURTHER ORDERED** that respondents' motion for extension of time to file a responsive pleading to the petition (Dkt. #15) is **GRANTED**. Respondents shall file such responsive pleading within **forty-five (45) days** of the date of this order.

DATED: 3 May 2016.

ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE